

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of

**Amendment of Part 90 of the
Commission's Rules to Provide
for the Use of the 220-222 MHz Band
by the Private Land Mobile
Radio Service**

PR Docket No. 89-552

**Implementation of Sections 3(n) and 332
of the Communications Act**

GN Docket No. 93-252

Regulatory Treatment of Mobile Services

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**Implementation of Section 309(j) of the
Communications Act-Competitive
Bidding, 220-222 MHz**

PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF COMTECH COMMUNICATIONS, INC.

ComTech Communications, Inc. ("ComTech" or the "Company"), by its attorneys, pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its Reply Comments in response to the initial comments of other parties filed in the above referenced proceeding in which the Commission proposes a new framework for the operation and licensing of systems in the 220-222 MHz band.

ComTech submitted Comments in this proceeding on September 27, 1995. Its Comments addressed a variety of issues. Generally, ComTech supported the licensing of nationwide non-commercial systems in the fashion originally proposed by the

Commission; requested technical and operational flexibility to offer whatever type of communications services are requested by consumers; sought the ability to aggregate both Phase I and Phase II licenses; suggested a revised method for determining the permissible distance between co-channel licensees; and opposed the use of secondary, fixed operations on 220 MHz systems.

The majority of parties submitting initial comments supported ComTech's positions. However, several parties took opposing positions. Accordingly, ComTech is pleased to have this opportunity to highlight the areas in this rulemaking proceeding in which there is clear consensus and oppose those entities that have taken positions unsupported by fact or reason.

REPLY COMMENTS

I. Non-Commercial Nationwide Licenses Should be Licensed Through Lotteries

ComTech's Comments urged that the Commission use, as originally proposed, lotteries to select among mutually exclusive applicants for nationwide non-commercial systems. The majority of parties addressing this issue agreed with ComTech. Those parties included applicants for nationwide systems¹, trade associations², and equipment manufacturers.³ Those commenting parties expressed sentiments similar to those expressed by ComTech. They argued that it is fundamentally unfair for the applicants

¹ See Comments of U.S. Central, Inc.; 360 Mobile Data Joint Venture; Columbia Cellular Corporation.

² See Comments of PCIA; AMTA; ITA.

³ See Comments of Securicor Radiocom, Ltd.; E.F. Johnson Company.

to be punished for the Commission's failure to conduct a lottery and that the need exists, contrary to the Commission's assertions, for non-commercial systems.

Those few commenting parties that suggested that the Commission employ auctions to select among applicants also urged that the FCC return the pending applications and accept new applications for nationwide commercial systems.⁴ These parties dismiss the needs of non-commercial entities to satisfy internal communications requirements. However, as demonstrated in the Comments of the Industrial Telecommunications Association ("ITA"), those needs are not fully satisfied. Accordingly, ComTech reiterates its support for the retention of nationwide 220-222 MHz spectrum for non-commercial uses and the use of lotteries to choose between pending applications for that service. The use of lotteries should be tied closely, however, to the non-commercial nature of this spectrum. If there is a possibility that the spectrum can be used for commercial purposes (through the resale of excess capacity or otherwise), ComTech believes that the spectrum should be subject to competitive bidding.

PLMRS Narrowband Corp. ("PLMRS") suggests what, to ComTech, is the worst of all possible alternatives: the retention of lotteries for the selection of licensees and the elimination of the commercial/non-commercial distinction that would otherwise apply to this spectrum. Congress' plain intent is for the Commission to auction spectrum that will be used to generate revenue. In an era where all other providers of commercial

⁴ Only PLMRS Narrowband suggested that the FCC conduct lotteries but allow the use of the spectrum for commercial as well as non-commercial purposes. As noted below, ComTech is strongly opposed to this suggestion.

communications services (including Phase II 220 MHz licensees) must bid for spectrum, PLMRS seeks an exemption from that clear Congressional intent.

If the Commission changes the permitted use of the channels to allow commercial operations, PLMRS cannot argue that FCC delay caused the imposition of the requirement that the applications be subject to auction. The applications were originally submitted to satisfy internal communications needs. Such applications were, and continue to remain immune from auctions. If, however, as PLMRS suggests, the Commission fundamentally changes the nature of the channel allocation, it should comply with the clear intent of Congress and auction the spectrum. This is not a case where commercial applicants submitted applications prior to the Commission being provided with auction authority. Instead, this is a case where the applications were submitted for a service to which auction authority does not extend. Accordingly, if the channels retain their original status (as ComTech recommends), they must be licensed by lottery. Any change in that status should prompt the Commission to use its auction authority.

II. The Proposed Interference Criteria is Inadequate

In its Comments, ComTech pointed out that the Commission's proposed criteria for protecting co-channel licensees would be inadequate. Instead, ComTech recommended that the Commission prohibit Phase II licensees from exceeding a signal strength of 28 dBu V/m at a Phase I licensee's 28 dBu V/m service contour, based upon the maximum power and height permissible at a Phase I licensee's site.

All other parties addressing this issue agreed that the Commission's proposal is inadequate to protect existing licensees. As most commenting parties point out, the coverage attainable with a 220 MHz system exceeds that which the Commission anticipated when it originally crafted regulations for this service. Accordingly, the FCC's proposed protection criteria of a 10 dB signal strength difference at an existing licensee's 38 dBu service contour falls considerably short of a licensee's actual coverage area. Other parties recommend use of a 28 dBu protection criteria as well. Because there is **no support** in the record (other than the FCC's own outdated presumptions) for the Commission's recommendations, the FCC must adopt the more realistic approach recommended by ComTech and others. Such an approach would include the protection of a 28 dBu V/m service contour.⁵

III. The Commission Must Not Permit the Use of Secondary, Fixed Transmitters

Fairfield Industries, Inc. ("Fairfield") supports the Commission's proposal to permit the use of secondary, fixed operations in the 220-222 MHz band. ComTech's Comments strongly opposed this proposal. ComTech continues to believe that secondary operations of any nature are fundamentally incompatible with the rights created by the auctioning of spectrum. Accordingly, it opposes Fairfield's recommendations.

⁵ Other parties suggested that Phase II licensees observe a 10 dB signal strength difference at a Phase I licensees' 28 dBu V/m contour. This proposal would provide even greater protection than ComTech recommends. Because ComTech favors protection of incumbent licensees, it supports this proposal. Nevertheless, ComTech recognizes that its proposal, which also uses a 28 dBu V/m service contour as the basis for protecting incumbent licensees (but with 0 dB signal strength difference), accords more closely with the existing 120 km mileage separation contained in the regulations.

ComTech appreciates the valuable services that are rendered by telemetry operations. Indeed, ComTech is pleased that such requirements can be met in the 220-222 MHz band. As a nationwide licensee, ComTech will certainly make available its spectrum to customers who desire to use the channels for this purpose. However, even on a secondary basis, there is no reason to permit a user to employ spectrum for which a licensee bid at auction. Instead, the entity with a telemetry requirement should contact one of the many 220-222 MHz licensees that will serve its area to secure the right to use that licensee's channels.

Fairfield originally submitted its request when the 220-222 MHz band was not subject to auction. Under those circumstances, it may have been reasonable for licensees to be required to accept secondary operations on the channel. Now, however, the Commission has proposed to auction virtually all 220-222 MHz spectrum. This change in licensing mechanism should cause the Commission to reevaluate its proposal. Moreover, this is not a case where auctions are conducted for spectrum where there are existing secondary operations.⁶ In that case, bidders would be aware of the existence of secondary operations. In this case, there are no secondary operations in the 220-222 MHz band. Such secondary operations, as proposed by Fairfield, would be authorized after the auction winner obtains its license. Accordingly, the auction participant would have no idea if its spectrum would be populated with secondary users later. Such lack

⁶ See e.g., *In the Matter of Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, PR Dkt. No. 93-61, Report and Order (released Feb. 6, 1995).

of information would make the spectrum less valuable to potential licensees and depress auction values. Neither result is in the public interest.

IV. The Commission Should Permit Maximum Technical Flexibility

ComTech's Comments urged the Commission to permit Phase I and Phase II licensees maximum technical flexibility. In particular, it argued that all licensees should be permitted to provide fixed and paging services on a primary basis. Virtually all other parties addressing this issue supported ComTech's position.⁷

Two parties disagreed with ComTech. ProNet Inc. ("ProNet") stated that only Phase II licensees should be permitted to offer paging services. It argued that the Commission's proposal will "confer an immense windfall on incumbent 220 MHz operators while inflicting substantial injury on existing paging carriers." Unless the Commission finds that the adoption of the regulations it proposes will ultimately result in reduced service to the public, it must reject ProNet's arguments. However, ComTech expects that the Commission's proposal will have the precise opposite effect. It will provide consumers with another option for meeting their paging requirements. As the Commission has noted elsewhere, its mandate is to protect competition, not competitors.⁸ Accordingly, it must reject ProNet's parochial position.

⁷ See e.g., Comments of Michael R. Kelley, Overall Wireless Communications Corporation; Pagemart Operations, Inc. Noting the dynamic nature of today's wireless communications market, Overall Wireless Communications Corporation aptly commented that "the Commission must permit the licensee the opportunity to put the spectrum to the best use."

⁸ See *Nextel Communications, Inc., Order*, DA 95-263 (released February 17, 1995) ("The Commission's priority is to protect competition, not competitors, for the benefit of consumers.").

SEA Inc. ("SEA") objects to the Commission's proposal because it notes that the channelization of the 220 MHz band is designed to support two-way, and not one-way operations. It argues that if a licensee offers paging services, it will essentially "waste" one half of the authorized spectrum. Spectrum remains a limited commodity. Entities that bid on spectrum, as will Phase II licensees, will have every incentive to use the spectrum in the most intensive fashion possible, in order to satisfy as many customers as possible. The marketplace will ensure that the spectrum will be used in the most efficient method. Licensees that have paid for the use of spectrum will not allow any of its potential to be untapped. Accordingly, ComTech believes that SEA's concerns are misplaced and that the public will be best served by a licensee that has the flexibility to provide the type of service requested.

V. The Commission Should Permit License Aggregation

ComTech's Comments argued that the Commission should permit Phase I and Phase II licensees to aggregate as many licenses as they wish.⁹ License aggregation should be permitted, regardless of whether licensees are able to use contiguous spectrum. Accordingly, ComTech proposed the elimination of Section 90.739 of the regulations, which otherwise prohibits license aggregation.

⁹ ComTech here distinguishes between license aggregation, and the aggregation of contiguous spectrum. ComTech is in favor of both. However, it recognizes that the ability to aggregate channels to create contiguous spectrum will be dependent upon the adoption of a compatible channelization scheme. While many parties addressed the issue of contiguous spectrum and the impact on the existing channelization plan, ComTech does not address this issue in these Reply Comments. Nevertheless, the ability to aggregate licenses is independent of the use of contiguous spectrum.

All of the other parties addressing this issue supported ComTech's position.¹⁰ Accordingly, the Commission should adopt ComTech's position and permit license aggregation regardless of whether contiguous channels are created. As ComTech noted in its Comments, it is not necessarily the existence of contiguous channels that leads to the efficiencies created by allowing licensees to be authorized for the use of multiple channels in an area.

III. CONCLUSIONS

Most of the parties submitting comments in this proceeding agreed with ComTech. Based upon that agreement, the Commission should license the nationwide, non-commercial channels by lottery among the current applicants. To the extent that commercial services may be permitted on these channels, the Commission should permit the submission of new applications and conduct an auction. Similarly, there was agreement that the Commission should not adopt the proposed regulations governing co-channel interference protection. Instead, the FCC should adopt a 28 dBu V/m service contour for existing 220 MHz licensees and base interference protection on that service area. The Commission should not, as Fairfield Industries suggests, permit secondary, fixed use of 220-222 MHz channels. The Commission should, as most commenting parties agree, permit licensees maximum flexibility in the type of services they offer, including fixed and paging services. Finally, the Commission should permit

¹⁰ See e.g., Comments of SMR Advisory Group, L.C.; AMTA, U.S. MobilComm, Inc. In opposition to limits on aggregation, U.S. MobilComm, Inc. correctly pointed out that "[l]imits on aggregation restrict the commercial viability of the spectrum and prevent 220 MHz license holders from competing with other CMRS providers."

license aggregation in the 220-222 MHz band, regardless of whether such aggregation produces contiguous spectrum.

WHEREFORE, THE PREMISES CONSIDERED, ComTech Communications, Inc. hereby submits the foregoing reply comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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